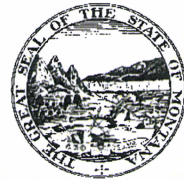




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Montana Department of Revenue



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Revenue and Transportation Interim Committee

Comments on Informality of Office of Dispute Resolution

Appeals Process

By

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42.2.616 DISCRETION AS TO FORMALITY OF PROCEDURES

(1) The department recognizes that a wide array of parties appears before the agency in connection with disputes. They range from large corporations employing professional tax counsel to individuals appearing on their own behalf contesting comparatively minimal amounts of tax, violation penalties, etc. It is the intent of the agency to accommodate all such disputes to the greatest extent possible. In particular, the agency seeks to conduct proceedings that are as unintimidating as possible. Persons who are not represented in disputes before the department should not feel apprehensive or dissuaded by procedural complexities, legalistic terms, or bewildering formalities. The hearing examiner will determine the level of formality and procedures appropriate for each dispute.

(2) In disputes where persons or other entities are not represented and are disputing smaller amounts of potential liability, it is understood that far less formal procedures may be used.

(3) In disputes where both parties are represented by counsel, applying rules of evidence and civil procedure as described or referred to in this chapter to provide structure to the process may be entirely warranted.

History: [15-1-201](#), [15-1-211](#), MCA; IMP, [15-1-211](#), MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99.

42.2.617 INITIAL CONFERENCES

(1) Following the Office of Dispute Resolution's receipt of a person's or other entity's request for appeal in any dispute, a hearing examiner assigned to the case shall schedule an initial conference. The conference shall be scheduled as soon as practicable. Parties may participate at the initial conference either in person or through

representatives, employees, or agents, as long as a requisite notice of appearance has been filed from an attorney or a written authorization to represent a party has been submitted from any other representative.

(2) Written notice of the conference shall be given at least 10 days prior to the date of the conference unless the parties waive notice. The initial conference may be conducted by telephone with the taxpayer and/or their representative.

(3) **Any issue may be settled at the initial conference**, including referring the dispute to mediation if both parties agree. In the course of the conference, the hearing examiner may take any appropriate action to settle, compromise, or reduce a deficiency subject to approval by the director or the director's designee. If the dispute cannot be settled at the conference, the hearing examiner shall set a time and date for subsequent mediation or a hearing which is as mutually satisfactory as possible to all concerned.

(4) Any discovery for the hearing may be discussed and the terms agreed upon at the initial conference.

(5) A party must exhaust their administrative remedies, whether by mediation or a hearing decision, prior to further appealing a matter. The parties may jointly stipulate to waiving a hearing.

(6) A record may not be kept of the initial conference. All such conference proceedings are considered confidential and privileged. Any matters raised do not constitute admissions against interest of any party participating in the conference.

(7) The hearing examiner conducting the initial conference shall not be the one presiding over the formal hearing if mediation occurs.

(8) Nothing in this rule may be construed as limiting a party's right to a hearing.

History: [15-1-201](#), [15-1-211](#), MCA; [IMP](#), [15-1-211](#), MCA; [NEW](#), 1999 MAR p. 2900, Eff. 12/17/99.

42.2.618 MEDIATION PROCEDURES

(1) The resolution of any matter in connection with a dispute may be pursued through mediation.

(2) Mediation may be requested at the initial conference. If both parties agree, mediation may also occur during the initial conference.

(a) The mediator may either be a hearing examiner from the Office of Dispute Resolution, or a mediator from outside the department. The mediator shall be chosen with the consent of both parties.

(b) If an outside mediator is selected, the cost of the mediator shall be paid by the "person" or "other entity" as defined in ARM [42.2.613](#).

(3) It will be understood that any person appearing on behalf of a party shall have full settlement authority for the party they are representing.

(4) If mediation produces a settlement agreement the written agreement shall be prepared by the parties and if necessary, with the assistance of the mediator. The settlement shall be signed by the parties and the mediator and it shall be filed with the director or director's designee for approval.

(5) If mediation does not resolve all issues in a dispute, the parties shall prepare a stipulation that identifies the issues resolved and those that still remain in dispute. For the issues remaining unresolved, a hearing shall be scheduled before a hearing examiner.

History: [15-1-201](#), [15-1-211](#), MCA; IMP, [15-1-211](#), MCA; [NEW](#), 1999 MAR p. 2900, Eff. 12/17/99.

42.2.619 HEARING PROCEDURES

(1) Except as provided herein, hearings shall be conducted in Helena, Montana.

(2) The location for hearings pertaining to liquor licensing matters are governed by ARM [42.12.108](#).

(3) Upon request by either party, hearings may be telephonic. Such requests will be granted unless the hearing examiner determines that telephonic participation may unfairly prejudice the rights of any party. If telephonic participation is requested, the hearing examiner will place the call at the designated time to whatever telephone number is provided by the person or other entity.

(4) Upon a showing of compelling circumstances by either party, the hearings officer may order a hearing to be conducted at a location other than Helena, Montana.

(5) Notice of the time and place for a hearing shall be given to the parties concerned, or their representatives if legal authorization is on file, not less than 14 days prior to the day fixed for such proceedings.

(6) A party may be represented by legal counsel at the hearing, and/or at every stage of adjudication. However, failure to obtain legal representation cannot be cited as grounds for complaint at a later stage in the adjudicative process or for relief on appeal from an adverse decision.

(a) Legal counsel must enter a notice of appearance.

(b) Any representative other than legal counsel must submit a written, signed statement authorizing the representative to act on the party's behalf.

(c) All documents and information pertaining to the dispute will be directed to the party's representative. They may be transmitted by facsimile number, e-mail address, or other electronic means if such transmission does not breach confidentiality. Otherwise, documents will be mailed to or served upon the representative's address as shown in the original filing.

(7) Hearing proceedings shall be conducted, at all times, with due regard for the confidentiality requirements imposed by [15-30-303](#), [15-31-511](#), MCA, and any other confidentiality requirements currently set forth in Title 15, MCA, or at any future time.

(8) Testimony at hearings shall be given under oath.

History: [15-1-201](#), [15-1-211](#), MCA; IMP, [15-1-211](#), MCA; [NEW](#), 1999 MAR p. 2900, Eff. 12/17/99; [AMD](#), 2002 MAR p. 3048, Eff. 11/1/02.

42.2.620 INFORMATION OFFERED IN HEARINGS

(1) The hearing examiner shall have the discretion to impose rules of civil procedure and/or rules of evidence as deemed necessary. Imposition of any rules governing hearings shall be done by written order.

(2) Every party at a hearing shall have the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(3) At the discretion of the hearing examiner, or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to pre-file the testimony.

(a) Pre-filed testimony may be placed in the record without being read into the

record at a hearing if the opposing parties have had reasonable access to the testimony before it is presented.

(b) If a party intends to question a witness on pre-filed testimony, that party must file a notice of intent to do so within a time frame agreed upon by the parties.

(4) The hearing examiner shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the hearing.

(5) Any party appearing at a hearing may submit a written statement addressing factual or legal issues, including cites of legal authority, if deemed necessary by the hearing examiner for a full and informed consideration of all matters.

History: [15-1-201](#), [15-1-211](#), MCA; [IMP](#), [15-1-211](#), MCA; [NEW](#), 1999 MAR p. 2900, Eff. 12/17/99.

42.2.621 FINAL AGENCY DECISION AND APPEAL

(1) In accordance with the authority of the director as provided in [2-15-112](#), MCA, the director delegates the authority to issue Final Agency Decisions (FAD) to the Office of Dispute Resolution (ODR) for all matters except liquor license violations, revocations, and lapses.

(2) The delegation to issue a FAD applies only to matters referred to ODR and not excepted in (1).

(3) A liquor FAD issued by the director or the hearing examiner may be appealed to the appropriate district court for the state of Montana as provided in [16-4-411](#), MCA.

(4) A tax FAD issued by the hearing examiner shall be appealed to the State Tax Appeal Board (STAB) as provided in [15-2-302](#), MCA.

(5) If a person or other entity receives an adverse agency decision in a tax dispute, they shall have 30 days to submit an appeal from such decision to the State Tax Appeal Board.

(6) If no decision is rendered by the end of the 180-day period specified in [15-1-211](#), MCA, and ARM [42.2.616](#), the department shall issue a determination to the taxpayer. The determination shall inform them that the 180-day term has run without a decision and that they are therefore entitled to carry their appeal forward. The person or other entity shall then have 30 days to file a complaint with the appropriate reviewing authority.

History: [15-1-201](#), [15-1-211](#), [15-1-217](#), [16-1-303](#), MCA; [IMP](#), [2-4-621](#), [2-4-623](#), [2-4-631](#), [2-15-112](#), [2-15-1302](#), [15-1-211](#), [15-2-302](#), [16-1-302](#), [16-4-411](#), MCA; [NEW](#), 1999 MAR p. 2900, Eff. 12/17/99; [AMD](#), 2006 MAR p. 85, Eff. 1/13/06; [AMD](#), 2007 MAR p. 477, Eff. 4/13/07.